

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

KELLY MICHAEL VELAYAS,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

1:23-CV-891-RP

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Susan Hightower concerning Plaintiff Kelly Michael Velayas' ("Velayas") complaint pursuant to 28 U.S.C. § 1915(e), 28 U.S.C. § 636(b) and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. (R. & R., Dkt. 4). In her report and recommendation, Judge Hightower recommends that the Court dismiss this action pursuant to 28 U.S.C. § 1915(e)(2)(B). (*Id.* at 2). Velayas timely filed objections<sup>1</sup> to the report and recommendation. (Objs., Dkt. 6).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure de novo review by the district court. 28 U.S.C. § 636(b). Because Velayas timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Velayas' objections and adopts the report and recommendation as its own order.

---

<sup>1</sup> After Judge Hightower issued the report and recommendation, Velayas filed a Motion for Recusal and Response to Motion to Dismiss. (*See* Dkt. 6). In an abundance of caution since Velayas is proceeding pro se, the Court construes that filing as objections to the report and recommendation.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Susan Hightower, (Dkt. 4), is **ADOPTED**.

**IT IS FURTHER ORDERED** that Velayas' complaint, (Dkt. 1), is **DISMISSED WITH PREJUDICE**.

**IT IS FINALLY ORDERED** that Velayas' Motion for Recusal and Response to Motion to Dismiss is **DENIED** in light of this adoption.

The Court will enter final judgment by separate order.

**SIGNED** on October 4, 2023.

A handwritten signature in blue ink, appearing to read "R. Pitman", is written above a horizontal line.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE